Remarks

Applicants acknowledge that the Terminal Disclaimer has been accepted.

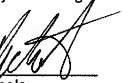
The claims were rejected as failing to comply with the written description requirement. Claim 1 has been amended and the rejection is now moot. Notification to that effect is requested.

Claims 1, 3, and 6-10 were rejected as being anticipated in view of US 2004/0097472 to West. Claim 5 was rejected as being obvious in view of West. Applicants respectfully traverse. The premise of the rejections is that "[s]ince the components are same claims 9-10 are inherent". Although not stated, presumably the Examiner relies on the same premise in rejecting claims 1 and 3, which require a pH from about 4.5 to 9. The rejection is premised on this theory of inherency because West is completely silent about the pH of the disclosed composition. However, MPEP 2112 requires that "[i]n relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." *Ex parte Levy,* 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original).

As pointed out in paragraph [0026] of the instant specification, it is the claimed carrier that assists in maintaining the desired pH of the composition – not the claimed lauryl imino dipropionic acid tocopheryl phosphate. In other words, the present specification teaches that the pH is not an inherent characteristic that simply results

from the presence of the claimed lauryl imino dipropionic acid tocopheryl phosphate. Therefore, because the Office Action does not provide any factual or technical reasoning to support the Examiner's conclusion that the claimed pH necessarily flows from the compositions disclosed by West, the rejection cannot stand. Applicants therefore request withdrawal of the rejection.

It is believed that the pending claims are in condition to be allowed and notification to that effect is requested. The Examiner is requested to contact the undersigned attorney at (312) 321-4276 to resolve any remaining issues.



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